

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
ANDRE JACKSON,

Plaintiff,

-against-

14 CV 08975 (LTS)

COMPLAINT

**THE CITY OF NEW YORK, SGT. JAMES WILLIAMS,
(Shield 4916, 43rd Precinct), and POLICE OFFICER
NELSON ACEVEDO (Shield 6642, 43rd Precinct), and
JOHN DOES 1-5,**

JURY TRIAL DEMANDED

Defendants.
-----X

Plaintiff **ANDRE JACKSON**, by his attorney, Joel Berger, Esq., for his complaint alleges,
upon information and belief, as follows:

NATURE OF THE ACTION

1. This is an action to recover money damages arising out of the violation of plaintiff's rights under the Constitution and laws of the United States and the State of New York, including false arrest and false imprisonment, malicious prosecution, and unnecessary and excessive use of force, by employees of the New York City Police Department (NYPD),

JURISDICTION AND VENUE

2. This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the First, Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

3. The jurisdiction of this Court is predicated upon 28 U.S.C. §§ 1331 and 1343.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391 (b).

PENDENT JURISDICTION

5. This Court also has jurisdiction over plaintiff's state law claims, pursuant to its pendent or supplemental jurisdiction as codified in 28 U.S.C. § 1367.

6. On August 22, 2013, within ninety days after the claims alleged in this complaint arose, a verified Notice of Claim was duly served upon the Comptroller of the City of New York pursuant to General Municipal Law § 50-e.

7. At least thirty days have elapsed since the service of the Notice of Claim, and adjustment or payment of the claims has been neglected or refused by defendant City of New York.

8. This action is being commenced within one year and ninety days after the happening of the events upon which the claims are based.

JURY DEMAND

9. Plaintiff demands trial by jury in this action.

PARTIES

10. Plaintiff Andre Jackson, age 47 at all times relevant herein, is a black male who is a citizen of the United States and a resident of the State of New York.

11. Defendant City of New York is a municipal corporation organized under the laws of the State of New York. It operates the NYPD, a department or agency of defendant City of New York responsible for the appointment, training, supervision, promotion and discipline of police officers and supervisory police officers, including the individually named defendants herein.

12. At all times relevant herein, defendant Sgt. James Williams, Shield 4916, was a police officer employed by the NYPD, assigned to the 43rd Precinct, Bronx, NY.

13. At all times relevant herein, defendant PO Nelson Acevedo, Shield 6642, was a police lieutenant employed by the NYPD, assigned to the 43rd Precinct, Bronx, NY.

14. At all times relevant herein, defendants John Does 1-5 were police officers or supervisory police officers employed by the NYPD

15. At all times relevant herein, defendants Williams, Acevedo and John Does 1-5 were acting as agents, servants and employees of defendant City of New York and the NYPD.

16. At all times relevant herein, all defendants were all acting under color of state law.

FACTS

17. On Friday, August 16, 2013, at approximately 9:00 P.M., plaintiff was arrested in his building of residence, 2030 Cross Bronx Expressway (sometimes referred to as 2030 East 177th Street), Bronx, NY 10472.

18. Plaintiff lives in Apartment 2B, which is on the third floor of the building.

19. Police officers had entered the building due to some sort of disturbance on the floor below plaintiff's dwelling.

20. Plaintiff was concerned for the safety of his children -- a boy, age 7 and a girl, age 12 -- who had been playing downstairs in a courtyard in front of the building.

21. Plaintiff exited his apartment solely with the peaceful intention of getting his children and escorting them back to his apartment.

22. As plaintiff exited his apartment he was, without any warning, immediately assaulted by police officers, beaten about the face, arms and legs, and dragged by his ankles down three flights of stairs.

23. Plaintiff suffered numerous cuts and bruises including a black left eye and a large contusion on the right side of his face.

24. In an effort to justify their illegal behavior, the police arrested plaintiff and charged him with obstructing government administration (NYS Penal Law §195.05) and resisting arrest

(NYS Penal Law §205.30), both Class A misdemeanors.

25. Defendant Sgt. James Williams, Shield 4916, of the 43rd Precinct, was the complainant

26. The Criminal Court complaint, written solely upon the word of Sgt. Williams, was sworn to as a hearsay complaint by defendant PO Nelson Acevedo, Shield 6642, also of the 43rd Precinct.

27. At no time did plaintiff in any manner interfere with any police officers performing their official functions.

28. At no time did plaintiff in any manner resist arrest.

29. Plaintiff was taken to the 43rd Precinct in handcuffs, and was later taken to Bronx Central Booking in handcuffs.

30. Plaintiff remained imprisoned until Sunday, August 18, 2013, at approximately 10:30 A.M., when a judge released him on his own recognizance.

31. Plaintiff was imprisoned without any lawful justification for approximately 37½ hours.

32. Plaintiff has had numerous court dates in Bronx Criminal Court since his arrest, including October 24, 2013, January 8, 2014, February 4, 2014, April 21, 2014, May 23, 2014, June 24, 2013, August 6, 2013, and September 29, 2013. His next scheduled court appearance will be on December 5, 2014.

33. Plaintiff intends to defend vigorously against the charges and is confident that he will be totally exonerated.

FIRST CLAIM FOR RELIEF

34. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-33.

35. Defendants, by their conduct toward plaintiff alleged herein, violated plaintiff's rights guaranteed by 42 U.S.C. § 1983, the First, Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States, and Article I, §§ 1, 5, 6, 11 and 12 of the Constitution of the State of New York.

SECOND CLAIM FOR RELIEF

36. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-33 and 35.

37. The acts complained of herein are a direct and proximate result of the failure of the City of New York and the NYPD properly to select, train, supervise, promote and discipline police officers, detectives and supervisory officers.

38. The failure of the City of New York and the NYPD properly to select, train, supervise, promote and discipline police officers, detectives and supervisory officers constitutes gross and deliberate indifference to unconstitutional conduct by those officers.

39. The official policies, practices and customs of the City of New York and the NYPD, alleged in ¶¶ 1-33, 35 and 37-38 violated plaintiff's rights guaranteed by 42 U.S.C. § 1983, the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States, and Article I, §§ 1, 5, 6, 11 and 12 of the Constitution of the State of New York.

THIRD CLAIM FOR RELIEF

40. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-33, 35, and 37-439.

41. The conduct toward plaintiff alleged herein constituted false arrest, false

imprisonment, malicious prosecution, the unnecessary and excessive use of force, and employee negligence.

42. The conduct toward plaintiff alleged herein subjected this man with no prior arrest record to trauma, shock, debasement, shame, fright, fear, humiliation, embarrassment, loss of freedom, harassment, and physical, psychological and emotional injury, trauma, pain, and suffering.

FOURTH CLAIM FOR RELIEF

43. Plaintiff repeats and realleges the allegations contained in ¶¶ 1-33, 35, 37-39, and 41-42.

44. At all times relevant herein, the individual defendants were on duty and were acting within the scope of their employment as agents, servants and employees of the City of New York, which is therefore responsible for their conduct under common law, state law and Article I, §§ 1, 5, 6, 11 and 12 of the Constitution of the State of New York.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment against defendants as follows:

- (a) Compensatory damages against all defendants, jointly and severally;
- (b) Punitive damages against all individual defendants, jointly and severally;
- (c) Reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and
- (d) Such other and further relief as this Court deems just and proper.

Dated: New York, New York
November 12, 2014

/s/ Joel Berger

JOEL BERGER

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ATTORNEY FOR PLAINTIFF